IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 226 OF 2006

1. Sopanrao Bhikhoba Jadhav,
2. Mr.Ajay Sopanrao Jadhav. ...Applicants

V/s.

The State of Maharashtra. ...Respondent

Mr.A.H.H. Ponda for Applicants.
Mr.K.S. Patil for the Complainant.
Mr.R.Y. Mirza, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 1, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. Shri Patil, learned Counsel appearing on behalf of the original complainant made a oral request that he may also be heard on behalf of the complainant though no formal application has been filed. Considering the sensitive nature of the case and the allegations which are made against the applicant, I have heard Shri Patil

who intervened on behalf of the complainant at length.

2. This is an unfortunate case where the deceased, the wife of the applicant no.2 committed suicide in the matrimonial house after having locked herself in a room barely eight months after the marriage. Four days after the funeral, a complaint is lodged by the father of the deceased girl alleging that both the applicants and the other relatives had demanded dowry and had harassed her and had forced her to commit abortion in the month of October 2005 and as a result of this, the girl had committed suicide. Applicant no.1 i.e. father-in-law of the deceased was granted anticipatory bail by this Court by order dated 19th January, 2006. Thereafter, the applicant no.2 was directed to report to the police station for a period of one week commencing from 20th January, 2006 so that the Investigating Officer could interrogate the applicant no.2.

3. It is submitted by the learned Counsel appearing on behalf of applicant no.2 that the medical papers which are annexed to the application clearly indicate

that the abortion had taken place after bleeding was noticed by the doctor who advised for abortion and accordingly, the doctor had performed an operation which is known as "D & C" which was performed under general anaesthesia on 9th October, 2005. Thereafter, he submitted that deceased was working but was unhappy because of the abortion which had taken place. It is submitted that the present allegations have been made for the first time four days after the funeral had taken place. It is submitted that at the time of funeral, no complaint or allegation was made against the applicant and other members of the family. He relied on a judgment of the Supreme Court in the case of **Sanju alias Sanjay Singh Sengar v/s. State of Maharashtra, reported in II (2002) CCR 189 (SC)** wherein the Supreme Court had noted that the word ’instigate’ which is found under the provisions of Section 306 of the IPC denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of investigation. He submitted that there was absence of this vital ingredients in the facts of the present case. He also

relied on the judgment of the **Supreme Court in the case of Swami Prahaladdas V/s. State of M.P. and Anr., reported in 1995 SCC (Cri.) 943** wherein the Supreme Court held that merely because the husband had asked the deceased to go home and commit suicide, the suicide was not the direct result of the words uttered by the appellant.

4. He also invited my attention to E-Mail which was sent by the wife to the husband one day before the incident in which she had sent a Marathi poem by E-Mail which indicated her state of mind. He submitted that therefore, this is a fit case for grant of anticipatory bail.

5. Mr.Patil, learned Counsel appearing for the complainant also supported the submissions made by the learned APP for the State. He submitted that the fact that the girl had committed suicide within eight months after the marriage itself indicated that the girl was pressurised and harassed and there was no other option for her to commit suicide for which the applicants alone

were responsible and therefore, the application for anticipatory bail on that count was liable to be rejected. He submitted that before granting the application for anticipatory bail, the Court may also consider the gravity of the case and seriousness of the offence and in the present case, the girl had lost her life because of the harassment and ill-treatment by the applicants. He submitted, therefore, that the application for anticipatory bail is liable to be rejected.

6. So far as the provisions of Section 438 of the Cr.P.C. are concerned, it has been held by the Supreme Court and the High Court that if prima facie case is made out by the applicant that false allegations are made against him on account of enmity or if such allegations are made maliciously, the Court exercising jurisdiction under Section 438 is entitled to release the applicant on bail in the event of his arrest even if the offence alleged is punishable with death or imprisonment for life.

7. In the present case, the facts are very unfortunate in the sense that a young girl who got married eight months before the incident decided to end her life. Three months before the incident, there was unfortunate case of abortion and the girl was obviously in a delicate frame of mind. At the time of funeral of the deceased, no allegations were made against the inlaws, however, four days thereafter, various allegations have been made including the allegation that the girl was forced to commit abortion. A query was made by this Court to the Additional Public Prosecutor whether the complaint about the forced abortion was made by the girl to the doctor or other persons in the hospital. Learned APP after taking instructions from the Investigating Officer candidly stated that no such statement was made to the doctor or any other person in the hospital. Thus, prima facie the theory of forced abortion is an after thought. Further, there is no documentary or other evidence to indicate that the girl had written letter to her parents alleging harassment at the hands of inlaws on account of demand of dowry.

8. In these circumstances, it is difficult to come to a definite conclusion at this stage that the girl had committed suicide on account of harassment by the inlaws. The investigation is almost over. Applicant No.2 has been interrogated by the police in the present case. There is no dispute that the girl had committed suicide as her body was found inside her room which was locked from inside and door had to be broken open. Thus, there is no suspicion regarding the actual cause of death and there is no allegation or suspicion that the girl may have been murdered by the applicants. In view of this, considering the totality and the facts and circumstances of the case, the custodial interrogation of the applicant no.2 is not necessary. In the result, the application for anticipatory bail is allowed.

9. The applicant no.2, in the event of his arrest, in connection with an offence which is registered with Pant Nagar Police Station, Ghatkopar Division, vide C.R.No.10/2006 on a complaint filed under Section 498A read with Section 306 of the IPC, be released on bail in the sum of Rs.10,000/- with one or two sureties in the

like amount. The applicant shall report to Pant Nagar Police Station twice in a month till the filing of the chargesheet and shall attend the police station as and when he is called for interrogation during this period. The applicant after filing of the chargesheet shall report to Pant Nagar Police Station once in a month.

. The application is disposed of in the above terms.

(V.M. KANANDE, J.)